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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,450	04/30/2001	Gilbert Grosdidier	3997P008	4452
8791	7590	06/01/2005	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030			HSU, ALPUS	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/846,450

Applicant(s)

GROSDIDIER ET AL.

Examiner

Alpus H. Hsu

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 and 18-20 is/are allowed.
- 6) ☒ Claim(s) 10-13 and 21-26 is/are rejected.
- 7) ☒ Claim(s) 14-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/30/05</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. In the specification, paragraph [0009], the applicant is requested to provide the information regarding the serial no., title, inventor, filing date and update the status from time to time for the listed related co-pending application.

2. Claims 21-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 21, line 4, claim 22, line 3, each occurrence of the term “the networks” lacks antecedent basis since only one network has been recited previously. Furthermore, in claim 21, lines 3-4, it is unclear as to how the peaks are related to the bandwidth mismatch at nodes.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over AWEYA et al. in U.S. Patent No. 6,584,111 (cited by the applicant).

Referring to claim 10, AWEYA et al. discloses a communication network, comprising: one or more nodes (102, 104, 106) at which traffic streams are buffered; and at least one monitor node (figure 8) coupled in a communication path with one of the nodes at which traffic streams are buffered, the monitor node configured to take a sample of throughput data for a traffic stream of interest (col. 13, lines 38-48) to calculate the effective capacity. AWEYA et al. differs from the claim, in that, it does not compute a correlation result for the sample to determine whether congestion exists along the communication path of the traffic stream of interest according to the correlation result. However, AWEYA et al. does indicate that it is well known in the art to capture correlation structures observed in networking traffic using wavelet transform analysis (col. 11, lines 15-27) for congestion control. Therefore, it would have been obvious at the time of the invention to incorporate the feature of calculating correlation result for the sample to determine whether congestion exists along the communication path of the traffic stream of interest according to the correlation result for the purpose of congestion control to further improve the system efficiency.

Referring to claim 11, AWEYA et al. discloses the correlation result is obtained through a Fourier analysis of the time series (col. 8, lines 25-36).

Referring to claim 12, AWEYA et al. discloses the correlation result is obtained through a wavelet analysis of the time series (col. 8, lines 55-62).

Referring to claim 13, AWEYA et al. discloses the correlation result is obtained through a mathematical process based on locating periodicities in the time series (col. 8, lines 25-36, 55-62).

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6. In view of the 112, 2<sup>nd</sup> paragraph problems raised above, no prior art rejection can be applied to claims 21-26.
7. Claims 1-9, 18-20 are allowed.
8. Claims 14-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Li et al. '792 & '151, Schenkel et al., and Chang et al. are additionally cited respectively to show the feature of congestion control utilizing traffic measurement, queuing analysis, correlation calculation and power spectrum similar to the claimed invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AHH

A handwritten signature in black ink, appearing to read 'Alpus H. Hsu', written in a cursive style.

Alpus H. Hsu  
Primary Examiner  
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